



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION**

MATTHEW DANIEL MYERS,	§	
Plaintiff,	§	
	§	
vs.	§	CIVIL ACTION 9:23-4033-MGL
	§	
JASON THOMASON, OD, and DOES 1–10,	§	
Defendants.	§	

---

---

**ORDER ADOPTING THE REPORT AND RECOMMENDATION,  
GRANTING DEFENDANT’S MOTION TO DISMISS,  
AND DISMISSING PLAINTIFF’S COMPLAINT**

---

---

Plaintiff Matthew Daniel Myers (Myers) filed this lawsuit against Defendants Dr. Thompson (Thompson) and Does 1–10 pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1999). He complains of alleged deliberate indifference to his medical needs. Myers is representing himself.

In the motion to dismiss for failure to state a claim (the motion), Thompson is properly identified as Jason Thomason, OD (Thomason). The Clerk of Court shall make this correction to the docket.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting to the Court Thomason’s motion be granted. Additionally, “[n]otwithstanding [Myers’s] failure to properly identify and serve Defendant Does 1–10, . . . the [Magistrate Judge] recommends dismissal of this case in its entirety.” Report at 9 n.4.

The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on March 13, 2024, and the Clerk entered Myers's objections on April 4, 2024. The Court has carefully considered Myers's objections, but holds them to be without merit. It will therefore enter judgment accordingly.

The Magistrate Judge offers two rationales for her suggestion to grant Thomason's motion and dismiss the complaint. First, she goes into a detailed discussion as to how the Supreme Court disfavors finding new contexts in which one may properly file a *Bivens* claim. She then concludes, "because [Myers's] claim would expand *Bivens* to a 'new context' and because there are 'special factors' counseling against doing so, [Myers's] *Bivens* claim based on non-emergent care is not cognizable." Report at 7 (quoting *Mays v. Smith*, 70 F.4th 198, 206 (4th Cir. 2023).

Second, as to Thomason's motion, she states "[t]here are no allegations . . . [Myers] has a serious medical condition or . . . Thomason was deliberately indifferent to that serious medical need." Report at 8.

Myers addresses the Magistrate Judge's only second reason, arguing his "loss of vision[,] which is correctable[,] does in fact qualify as a serious medical need, and that [Thomason] acted with [d]eliberate [i]ndifference, thereby violating Myers' s [c]onstitutional rights." Objections at 2.

But, even if Myers is correct the Magistrate Judge erred as to the second basis for her recommendation, his complaint must still be dismissed because his “*Bivens* claim . . . is not cognizable.” Report at 7.

That said, having considered Myers’s objections, the Court agrees with the Magistrate Judge that he has failed to allege he “has a serious medical condition or . . . Thomason was deliberately indifferent to that serious medical need.” *Id.* at 8. Consequently, the Court will overrule his objections.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Myers’s objections, adopts the Report, and incorporates it herein. It is therefore the judgment of the Court Thomason’s motion is **GRANTED** and Myers’s complaint is **DISMISSED**.

**IT IS SO ORDERED.**

Signed this 17th day of April, 2024, in Columbia, South Carolina.

/s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

\*\*\*\*\*

**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.